



Comptroller General  
of the United States

Washington, D.C. 20548

*J. Westfall - Mc Grail*

## Decision

**Matter of:** Eyring Corporation

**File:** B-245549.5

**Date:** December 9, 1991

Kenneth S. Kramer, Esq., and Deneen J. Melander, Esq.,  
Fried, Frank, Harris, Shriver & Jacobson, for the protester.  
Thomas J. Madden, Esq., and John J. Pavlick, Jr., Esq.,  
Venable, Baetjer, Howard & Civiletti, for AAI Systems  
Management Inc., an interested party.  
Sylvia E. Anderson, Esq., Department of the Navy, for the  
agency.  
Jennifer Westfall-McGrail, Esq., Office of the General  
Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

Protest is dismissed as untimely where not filed within  
10 working days after protester should have learned of its  
basis for protest.

### DECISION

Eyring Corporation protests the award of a contract to AAI  
Systems Management Inc. under request for proposals (RFP)  
No. N61339-90-R-0004, issued by the Naval Training Systems  
Center for visual system upgrades to Navy helicopter weapon  
systems trainers. Eyring has filed four other protests of  
the award to AAI with our Office (B-245549; B-245549.2;  
B-245549.3; and B-245549.4), which are pending. In this  
protest, Eyring contends that certain components of the  
visual display system offered by AAI--in particular, the  
lenticular screen, dome, and projector support structure--  
were proposed as Trainer Unique Equipment (TUE), but that  
AAI failed to comply with the solicitation's numerous design  
and development requirements for TUE. Eyring contends that  
this protest, which it filed on November 15, is timely since  
it did not learn until November 1, when it received a letter  
from AAI to our Office, that AAI had proposed its lenticular  
screen, dome, and projector support structure as TUE.

We dismiss the protest as untimely.

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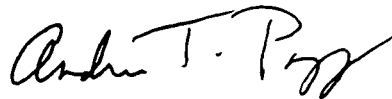
The RFP's Statement of Work encouraged offerors to use non-developmental items (NDI) for the visual system upgrade. NDI was defined as: "already developed and available equipment [including] software capable of fulfilling operational requirements either 'as is' or with minor modifications or Commercial Off The Shelf (COTS) as defined below."

The Statement of Work further provided that equipment which did not qualify as NDI would be classified as TUE and subjected to the solicitation requirements for TUE.

By letter dated October 28, 1991, received by the protester on October 29, the Navy responded to a supplemental request for documents filed by Eyring in conjunction with its earlier protests. Among the documents requested by Eyring were "all documents claiming or supporting AAI's claim that the visual display system proposed by AAI was NDI." In response to this request, the Navy furnished Eyring with three pages (C-2, C-13, and C-13a) from AAI's proposal, which indicated that the only components of the display system proposed by AAI that were offered as NDI were the calligraphic projector and its associated master control unit and remote control unit. Thus, Eyring should have known as of October 29, that the lenticular screen, dome, and projector support structure were not submitted and evaluated as NDI and were, therefore, subject to the TUE requirements of the solicitation.

Our Bid Protest Regulations require that protests based on other than alleged improprieties in a solicitation be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Here, as noted above, the protester should have known, as of October 29, that AAI had not offered the lenticular screen, dome, and projector support structure as NDI and that the equipment was therefore subject to the solicitation requirements for TUE. To be timely, Eyring's protest on this issue would have had to be filed by November 13. Since it was instead not filed until November 15, it is dismissed as untimely.

The protest is dismissed.



Andrew T. Pogany  
Acting Assistant General Counsel